IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

SIMON NEWMAN,

      Plaintiff,

v.   **Civil Action No. 5:06cv163**
                                               (Judge Stamp)

USP - HAZELTON,

      Defendant.

REPORT AND RECOMMENDATION

The *pro se* Plaintiff initiated this case on December 27, 2006, by filing a civil rights complaint, a motion to proceed as a pauper, an executed Consent to Collection of Fees form and a Prisoner Trust Account Report. That same day, the Clerk sent Plaintiff a deficiency notice advising him that the Court could not process his request to proceed as a pauper until such time as he filed a fully complete Prisoner Trust Account Report, including authorized signature. The notice also advised Plaintiff that the failure to file the report within 30 days could result in the dismissal of his case.

A review of the file shows that as of the date of this Opinion, Plaintiff has not filed the requested report, has not filed a motion to extend time to do so, or otherwise explained his reasons for noncompliance. Accordingly, it is the recommendation of the undersigned that the instant case be DISMISSED without prejudice for the failure to prosecute unless the Court hears to the contrary within ten (10) days from the date of this Order. Any pleadings, motions, letters or other documents filed in response to this Report and Recommendation should be submitted to the Honorable

Frederick P. Stamp. Jr., United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); <u>Thomas v. Arn</u>, 474 U.S. 140 (1985); <u>Wright v. Collins</u>, 766 F.2d 841 (4th Cir. 1985): <u>United States v. Schronce</u>, 727 F.2d 91 (4th Cir. 1984), <u>cert. denied,</u> 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff and counsel of record, as applicable.

DATED: May 8, 2007

 /s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE